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8 July 1977

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MEMORANDUM FOR: John N. McMahon  
Acting Deputy to the DCI for the Intelligence Community

FROM: [REDACTED]  
Chief, Security Committee

SUBJECT: PRM-29 Issues

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1. Issues and options identified by the PRM-29 working groups have been combined into a consolidated report (attachment) which was sent to the co-chairmen of the PRM ad hoc committee on 6 July. The issues are to be decided as definitively as may be during a three-day ad hoc committee meeting (13-15 July), with the resultant product being circulated for formal department and agency comment. [REDACTED] Associate General Counsel, will represent the DCI at that meeting [REDACTED] will provide him back-up).

2. This memorandum is to summarize areas of apparent agreement, and state known issues with recommendations for your consideration, as they have evolved to date in the PRM-29 exercise.

a. The main thrust of PRM-29 opinion to this point would continue all of the major elements of Executive Order 11652, but impose criteria and standards where none are now provided and make existing ones more stringent. This would permit departments and agencies concerned with national security matters to continue to protect sensitive information, but will require those who are directly concerned with classification matters to give more time and attention to their actions than they now have to. The desired effect of this is to make classifications measurably more credible than they now are, and concurrently to relieve some public pressure for more openness in Government by setting up barriers to the classification of items of little or no true sensitivity.

b. Working level agreement has been reached on these specifics:

(1) Oversight for the new security classification system should be provided by an office within an existing EOP component (e.g., OMB) and headed by a Presidentially

appointed Director and Deputy. The Director is to chair an interdepartmental advisory committee similar to the present Interagency Classification Review Committee (DCI represented thereon).

(2) A range of meaningful administrative sanctions should be provided for use against those who willfully abuse the classification system (wrongful declassification as well as wrongful classification).

(3) Uniform secrecy agreements should be required from all Government employees as a condition of access to classified information.

(4) The term "national security" should continue to be defined as the sum of national defense and foreign relations matters.

(5) Specific classification criteria (i.e., descriptions of functional or subject areas requiring protection) should be provided to determine classifiability. At least one such criterion would have to be present for information to merit classification. (The level would be a separate function of the degree of damage expected from disclosure.)

(6) Paragraph classification should be mandatory, with exceptions for specific items permitted only with approval of the new oversight body.

(7) Retain that section of E.O. 11652 which requires effective protection of foreign classified information provided the U.S.

(8) Prohibitions against improper classification more specific than those in E.O. 11652 should be written into the new Order.

(9) Heads of departments and agencies should be directed to develop and use guidelines for declassifying archival material. Such use must provide for effective consultation with cooperating foreign governments on their classified information held by us (there are some differences on how this should be done).

(10) The new declassification system should:

(a) divorce period of classification from level (one effect would be to eliminate the General Declassification Schedule);

(b) limit Secret and Confidential classifiers to six-year maximum period of classification;

(c) permit Top Secret classifiers to extend classifications past six years for specific, stated causes (comparable to present exemptions);

(d) permit classification beyond 20 years only on authority of a department head.

(11) Heads of departments and agencies should be directed to budget for and provide adequate resources to carry out provisions of the Order effectively.

(12) General declassification criteria should be specified in the Order.

(13) The mandatory review provisions of the Order should parallel those of the Freedom of Information Act (FOIA) with respect to age of material to be reviewed and to need to provide reasonably segregable portions (but much more time than the FOIA stipulates would be allowed for reviews).

c. The significant unresolved issues are:

(1) How extensive should be the appeals role of the new oversight body? The majority view is that it should be limited--i.e., to hearing appeals only on denials of declassification from requested reviews of Presidential papers 10 or more years old. This view also holds that a decision by the new body to override a departmental judgment will be suspended for 10 days to allow the department or agency head to appeal to the President's Assistant for National Security Affairs. A substantial minority wants the new body to hear and decide appeals on declassification denials under the FOIA as well. This seems adverse to the interests of the Intelligence Community--e.g., it would effectually undercut the authority of department and agency heads for final classification decisions; it would likely occupy most of the time of the new oversight body, undercutting its intended role as a useful forum for reviewing and developing classification policy.

RECOMMENDATION: That the DCI concur in the above stated majority view of the appeals role for the oversight body, and oppose any broadening of that role.

(2) What should the new Order state concerning standards and procedures for determining trustworthiness for access to classified data? This has been the most controversial issue. Defense has argued vehemently, supported by others, that the new Order should require uniform standards for investigation and adjudication of persons for access to differing levels of classified information. Their preferred option would task a component of the Executive Office of the President to develop and promulgate mandatory uniform standards (two or three) for Government-wide use in determining eligibility for access. Defense's intent is to force an end to investigative procedures, such as those prescribed in DCID 1/14, that they consider to be unnecessary and burdensome when applied to Defense personnel. The Intelligence Community has consistently opposed the Defense push in this area, not because of opposition to uniformity of standards (which is a logical goal), but because the standards Defense seeks seem quite inadequate to give minimum assurances of trustworthiness and loyalty. Community representatives in the PRM-29 forum have therefore felt compelled to argue for the status quo, under which each department and agency may amplify E.O. 10450 standards as deemed necessary. A status quo position is probably not tenable. The broad exchange of intelligence and other national security information argues for uniform standards for access to the same levels. The Community should be able to accept such, provided they were commensurate with the level of access and developed enough data to give a reasonably sound basis for confirming personal identity, and for identifying character traits indicative of trustworthiness and loyalty.

RECOMMENDATION: That if the status quo in this area becomes untenable, the DCI approve a fallback position under which the new Order would direct the attainment of uniformity in standards for determining trustworthiness for access to each of the levels of Confidential, Secret and Top Secret, through the development by the new oversight office, in consultation with the departments and agencies, of standards acceptable to all departments and agencies affected thereby.

(3) What provision should the new Order make for compartmentation? At early PRM-29 meetings, members were advised that a topic of very strong concern was the perceived need to reform practices and procedures on compartmentation. The Community is somewhat vulnerable here because it has no agreed, uniform criteria governing the establishment and review of all its compartments. We proposed criteria reflecting no more than that which we regularly expect would be done--i.e., normal safeguarding procedures must be found inadequate to protect the information; numbers of persons to be permitted access to the compartment must be kept low; and compartmentation controls must balance the need to protect against needs to use the information. These criteria found general acceptance, and were added to at the suggestion of others to require department or agency head personal approval for compartments, and to impose a three-year "sunset law" concept on existing and new compartments. The issue here is somewhat artificial, with the distinction bearing on the DCI's Community role. One option--which would require department head approval for compartments--would presumably limit the DCI's approval authority to the CIA. The other--which strikes us as unworkable--recognizes the DCI's Community role under his statutory responsibility, but would require the National Security Council to approve any other compartments (e.g., for Defense operational plans).

RECOMMENDATION: That the DCI approve criteria for compartments as stated above, and press for approving authorities to be heads of departments and agencies, or, for intelligence matters, the DCI.

(4) What provision should the new Order make with regard to classification guidelines? PRM-29 lists this as a specific topic for consideration. Two options are at issue. One, favored by departments such as State which have never developed or used classification guidance, would have the new Order make the use of classification guidelines optional. That approach is clearly contrary to the thrust of other PRM-29 evolutions, which point toward uniformity and specificity. The other would require the development and use of "general classification guidelines by departments and agencies, and encourage them to amplify such with specific guides." This would

appear to satisfy the widely shared belief that the availability and mandatory use of at least general guidance should result in better and more credible classifications. Agreement with that approach might forestall attempts to require detailed classification guides, which would be very difficult to develop for the Intelligence Community.

RECOMMENDATION: That the DCI approve support of the second option listed above.

(5) Should the new Order give special recognition to intelligence information? A proposal, offered late in the PRM-29 evolution, would have the new Order authorize "special departmental arrangements," reference statutory provisions which have some bearing on intelligence (e.g., 50 USC 403(d)(3) with regard to sources and methods, and 18 USC 798 with regard to COMINT), and proscribe automatic declassification of such intelligence. The object seems to be to focus attention on the special sensitivity of such information. The object is laudable, but the means seem likely to create problems. "Special departmental arrangements" means compartments, which are to be dealt with specifically by the new Order [see issue (3) above]. Reference to them by another name in another context would cloud the policy. Specific reference to the statutes cannot give the information involved any more status than it has now. It might invite unwelcome attention to the fact that the statutes do not provide for any specific protection for sources and methods information or COMINT. (This is unlike the case for Restricted Data, where the Atomic Energy Act provides for statutory protection wholly apart from the national security classification system.) Total exemption of such intelligence information from automatic declassification is unmanageable. We have been unsuccessful in defining where intelligence leaves off and where, for example, military operational or foreign relations plans pick up. With the above in mind, it would be helpful as an aid in bureaucratic infighting on classification to have the President give some recognition of concern for the protection of sensitive intelligence.

RECOMMENDATION: That the DCI, one, oppose having the new Order try to give intelligence a special status apart from other national security information; and, two, approve

having the new Order state the President's view that intelligence sources and methods information is particularly sensitive, and his desire that it be classified and declassified with particular care, consistent with the overall provisions of the Order.

3. A matter of concern to the Community under PRM-29 is the proposal to advance the date for automatic declassification from the present 30 years to 20 years after origin. Most involved in the PRM-29 effort apparently concluded that because the PRM asked for consideration, inter alia, of "which categories of classified material more than 20 years old could be declassified in bulk under appropriate guidelines," the issue was settled. We don't agree. While we do believe it likely that openness in Government constituencies will force serious consideration of this proposal, we believe strongly that the DCI should insure that the President and his immediate staff are aware of the resources which would be needed to deal with this change, and the consequences to national security should those resources not become available. The proposal would instantly require all classified material for the 1947-57 period to be declassified unless specifically authorized for extended protection based on individual review. That review would have to be stretched out over a number of years, and would be very expensive in terms of manpower. (The appendix to Tab F of the attachment is an assessment of the problem by Archives--it gives a rough estimate of \$200 million for the review cost over a 10-year period.) That level of resources would be competing with ongoing requirements in the developing budget. If it survived, it is by no means certain that the Congress would appropriate it. (Witness what happened on resources used to handle FOIA requests.) If the resources needed for the review fell measurably short, some records within the 10-year period could not be screened, but there would be no proper authority under the Order to continue to withhold them from the public. The potential impact on sources and methods, and on foreign cooperation, could well be disastrous. We urge this be brought to the DCI's personal attention.

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Attachment  
As stated

Distribution:

Orig. + Addressee w/att.  
1 - D/OPP w/o att.  
1 -  w/o att.  
1 - SECOM Subj. File w/o att.  
1 - SECOM Chrono w/o att.

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7 July 1977

MEMORANDUM FOR: Chairman, SIGINT Committee  
Chairman, COMIREX

FROM:   
Chairman, SECOM

SUBJECT: PRM-29 Report

1. Attached for your information is a copy of the consolidated report from the PRM-29 working groups. The report has been sent to the PRM-29 ad hoc committee co-chairmen for their use in preparing for the 13-15 July committee meeting.

Attachment  
As stated

Distribution:  
1 - C/SIGINT Committee w/att.  
1 - C/COMIREX w/att.  
1 - IC Registry w/att.  
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Chrono

1 July 1977

MEMORANDUM FOR THE RECORD

SUBJECT: PRM-29 Joint Working Group Meeting

1. The subordinate working groups of the PRM-29 ad hoc committee met jointly on 30 June 1977 to review and revise as necessary the consolidated joint report to Messrs. Gates and Neustadt, PRM-29 co-chairmen. Bob Gates described the time table for follow-on efforts as follows: the final report resulting from the 30 June meeting was due to him and Rick Neustadt by 6 July. They would add their comments and try to provide PRM-29 ad hoc committee members a final report by 8 July to be used for discussion at the scheduled 13-15 July ad hoc committee meeting. Mr. Gates said that the purpose of the latter meeting would be to take *ad referendum* votes on the report's options with the objective of narrowing them to the minimum number required to express department and agency views. He said he hoped ad hoc committee members would use the period between now and then to brief their principals so that votes would accurately reflect the latter's thinking to that point. Turning to substantive matters, Mr. Gates said that he and Mr. Neustadt had determined that Presidential reorganization plans do not admit the possibility of establishing a new independent office in the Executive Office of the President (EOP) to succeed the Interagency Classification Review Committee (ICRC). Further, he said it is highly unlikely that the Vice President would agree to chair any successor body to the ICRC. Mr. Gates said that Bob Wells and Art Van Cook had drafted new options to reflect these circumstances. Mr. Neustadt advised that the report which would result from this meeting would not identify any departments or agencies with any positions or options stated therein. He asked that the report be revised as necessary to insure that all actions recommended in the narrative section were reflected in options as well. In response to my question, Mr. Neustadt said that current planning was that the implementer for the new Executive Order would be written by the White House Staff and circulated to departments and agencies for formal comments.

2. Mr. Van Cook advised that the meeting agenda called for us to go through draft papers from each PRM-29 subgroup in turn, making such changes as members determined substantively necessary.

a. Subgroup I/R-1 (follow-on to the ICRC). Mr. Wells distributed the new option (Attachment A) dealing with a successor body to the ICRC. Key features of the new option are that the new office would be placed within an existing office of the EOP (e.g., OMB), and empowered to hear and act on declassification review appeals *only* for Presidential papers

10 or more years old. In response to my question, Mr. Wells agreed to correct the option to recognize that the director of the new office would also be chairman of the Departmental Advisory Committee. Eric Hirschhorn, OMB, argued that the new office should have a more wide-ranging appeals role. It was agreed that an additional option reflecting that would be included in the report. It was further agreed that the final report would reflect only the two options above, and a third which would retain overall program oversight responsibility in the NSC, abolish the ICRC, and hold each department head responsible for implementing program requirements.

b. Subgroup I/R-2 (disciplinary measures for abuse of the classification system). Mr. Neustadt asked that our report in this area not treat legislative proposals on unauthorized disclosures, as this subject would be taken up under the auspices of PRM-11. He referred to the 1 June 1977 Attorney General's Subcommittee report to the PRM-11 group on unauthorized disclosures, implied that their recommendations had been rejected, and said that a fresh look would be taken with regard to criminal penalties for such disclosures. No other changes were proposed for the I/R-2 report.

c. Subgroup I/R-3 (procedures for determining trustworthiness and compartmentation). I tabled several proposals for changes to the Subgroup report, and noted that those that bore on advantages and disadvantages keyed to options could be considered later by Mr. Wells and Mr. Van Cook on their merits. I discussed the need to amend Options 2 through 4, which, as written, would lock in place existing procedures under which contractor employees may be granted access to CONFIDENTIAL information at company initiative without any federal record checks. I said we saw no objection to having such an arrangement included as a separate option. The consensus was in support of my proposal, and Mr. Van Cook and Mr. Wells agreed to state that type of clearance as a separate option. I asked Mr. O'Neill, Domestic Council, if he had intended in Option 9, which lists the "National Security Council and/or the DCI (as appropriate)" as sole approving authorities for compartments, to recognize the DCI's statutory responsibility to protect sources and methods. He said he had. General discussion of Options 1 through 5 on procedures for determining trustworthiness led to a consensus that personnel security procedures would be more effectively dealt with if the report recommended that the Civil Service Commission review and initiate a revision of Executive Order 10450. Tom O'Brien, Defense, proposed and argued for a change to the options to require that numbers of accesses to compartmented information must be severely limited. Dave McCabe, State, and I spoke against it as an inappropriate back-handed approach to try to limit the number and scope of compartments. The consensus was against Mr. O'Brien's proposal.

d. Subgroup C/D-1 Report (what should be classified and what criteria). Allen Thompson, Archives, suggested listing as a separate option a proposal offered by the OMB representative that the new Order mandate the public disclosure of information classified in violation of specific prohibitions in the Order. Mr. Hirschhorn agreed to draft appropriate language. Jill

Ellman, ERDA, proposed a change to Option 10 on paragraph classification. I offered a clarification of the existing option. Several then spoke in favor of the maximum use of paragraph classification as essential to avoid derivative classification problems. The consensus was that ERDA's proposal should be listed as another option. It would permit a department head to grant exceptions to mandatory paragraph classification subject only to advising the successor to the ICRC. My clarification to Option 10 was adopted. That option would permit department heads only to seek waivers for exemption from the new oversight body. It was also agreed that Mr. Hirschhorn's proposal for a balancing test--a requirement that classification decisions balance the need to protect against the merits of public disclosure--should be added as a new option. I tabled a proposed change to Option 6 concerning mandatory classification guidelines. It was adopted with a slight modification by Mr. Thompson. It was also agreed to include as an option the statement of a test under the definition of CONFIDENTIAL to show the consequences of unauthorized disclosure. Jeff Smith, State, argued that the report should address the classification and protection of foreign information provided the U.S. (only the declassification of such information had been dealt with in another Subgroup report). It was agreed to include this. Mr. Van Cook then asked if the Intelligence Community wanted the Order to give explicit recognition to information on sources and methods, and COMINT. [redacted] CIA, discussed some considerations bearing on this. Mr. Smith suggested that sources and methods and COMINT be classified in accordance with the Order, in order to give them the protection mandated by statutes. [redacted] NSA, asked for an option referencing in the Order the relevant statutes (e.g., 18 USC 798). Mr. Van Cook read, and the members agreed to include as an option, an NSA proposal which would exempt from the Order's declassification provisions information covered by 18 USC 798, when such exemption was found necessary by SecDef or DIRNSA. Mr. Gates then asked for further discussion on whether the report should include an option bearing specifically on sources and methods information. [redacted] noted that the report glossed over this subject, and that a problem for the Community was that some sources and methods information required protection but did not appear to be readily classifiable under existing policy. Mr. Gates argued that the Order should recognize that sources and methods information is protectable apart from the classification system. He said the Order could not diminish the statutory responsibility of the DCI. Mr. Van Cook was asked to draft an option on this matter.

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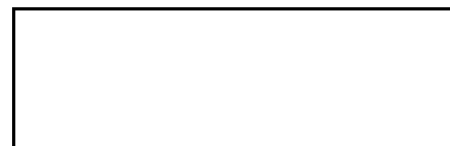
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e. Subgroup C/D-2 Report (declassification of archival material). I tabled, and the members agreed to include, a new Option (Attachment B) bearing on the declassification/extended protection of foreign-classified information. Mr. Hirschhorn asked for consideration of a further option designed to force a lesser degree of declassification review in order to cut costs and disclose more information. He acknowledged that this would entail a higher risk of disclosing still sensitive information. Mr. Thompson argued the impracticality of adjusting the degree of declassification review, noting that a particular problem was the increasing practice after World War II of intermixing sensitive information with non-sensitive. The group's consensus was that this was not a viable option. I tabled a new

option bearing on mandatory declassification reviews under the Executive Order, but withdrew it when discussion disclosed that there is no cost incentive to seek such reviews under the Executive Order as opposed to under the Freedom of Information Act (FOIA).


f. Subgroup C/D-3 Report (declassification procedures). I tabled a proposed change to the report which would highlight problems involved in changing the timeframe for mandatory declassification review from 30 to 20 years. I noted that such change was necessary to alert readers of our report that there were serious potential problems involved in such change. Mr. Wells expressed his complete agreement, and the group agreed to my proposal.



DCI Security Committee

Attachments:  
as stated

Distribution:

- Orig. - SECOM Subj. File w/atts.
- 1 - SECOM Chrono w/o atts.
- 1 - A/D/DCI/IC w/atts.
- 1 - D/OPP w/atts.
- 1 - C/SIGINT Committee w/atts.
- 1 - C/COMIREX w/atts.
- 1 -  (OGC) w/atts.

DCI/ICS/SECOM 

OPTION: Abolish the ICRC. Establish within an existing office(s) of the Executive Office of the President having current general oversight over internal operations of the Government and a close relationship with the President, a "Security Information Oversight Office." For example, perhaps place the oversight office in the Office of Management and Budget. Overall responsibility for monitoring, policy direction and implementation of the Executive order shall rest with the head of the selected E.O.P. Office. This Oversight Office shall be headed by a Director and a Deputy Director appointed by the President. Administrative support for the Oversight Office shall be provided by the selected E.O.P. Office. In addition, establish an "Interagency Security Information Advisory Committee" comprised of current membership on the ICRC. The functions assigned to the new Oversight Office shall be the same as those currently assigned to the ICRC except that the new Oversight Office shall act only on those appeals involving the declassification of 10 or more year old material which is not subject to the provisions of the Freedom of Information Act, as amended. In each such instance, representatives of the Interagency Security Information Advisory Committee shall be requested to provide an advisory opinion on the declassification or continued classification of the material to the Director of the Oversight Office. In those instances where the Director of the Oversight Office decides, based on the advisory opinions, to declassify the information, such action shall not take effect for a period of 10 days, during which time the Head of the affected Department may appeal the decision to the President through the Assistant to the President for National Security Affairs.

ADVANTAGES:

- a. From the public perception would be a more independent and authoritative body than the current ICRC.
- b. The course of action is more compatible with current plans for reorganization of the Executive Office of the President.
- c. This option provides a means for the public to appeal declassification denials of that information which is not subject to the provisions of the FOIA, as amended; e.g., Presidential materials.
- d. Eliminates the delays associated with action by Committee and will permit more rapid monitorship actions.
- e. This option continues to permit the oversight body to draw upon Departmental resources and expertise.

- f. Except for that information not subject to the FOIA, leaves the final executive branch decision on appeals with the Departments. Further, even in the case of the former, provides for advisory opinions by the Departments.
- g. This option retains an interagency forum for the exchange of views and ideas on security information.

DISADVANTAGES:

- a. The elimination of the appeals function on all but information not subject to the FOIA may have a slight negative impact on the public.
- b. This option does not provide as independent an appearance as would be obtained by a separate office in the Executive Office of the President.

SUGGESTED CHANGES TO THE ISSUE PAPER ON "WHICH CATEGORIES OF CLASSIFIED MATERIAL MORE THAN 20 YEARS OLD COULD BE DECLASSIFIED...."

Add a new option A3 reading: "The new Executive Order should direct heads of departments and agencies to develop, use, and maintain current declassification guidelines for information originated by their departments or within their subject matter jurisdiction. Such guidelines shall specify in reasonable detail what information requires continued protection, and for how long. If the period of continued protection cannot then be determined, the guidelines shall specify a date not more than ten years later for a second review, at which time a date certain for declassification shall be specified. Those departments and agencies which hold or expect to receive foreign classified information, shall, with the assistance of the Archivist of the United States as appropriate, advise the foreign governments or international organizations which provided or will provide classified information that such information will be subject to departmental guidelines for declassification or extended protection unless those governments or international organizations consult with the U.S. department or agency concerned to develop mutually agreed declassification guidelines for different treatment."

Advantages

1. Mandatory declassification guidelines, required to be kept current, would bring about better and more consistent declassification decisions, thereby reducing classified holdings and providing better and more justified protection to those items of continuing sensitivity.
2. The requirement for specificity in guidelines would help eliminate continued classification based on subjective considerations.
3. The option recognizes the government's commitment to maximize the release of information to the public, and should result in matching performance to promise.
4. The provision for specifying either definite dates for declassification or for one further review for the same purpose provides flexibility for dealing with unusual circumstances.
5. Provides for consistency in the treatment of classified information, whether of U.S. or foreign origin, absent foreign requests subject to our concurrence for different treatment.
6. Informs cooperating foreign governments of our intent with regard to classified information they share with us, and offers them the opportunity to work out with us different declassification regimes.

7. Maintains foreign confidence that the U.S. will respect their substantive concerns on protection of their classified information.

Disadvantages

1. Requires reallocation of resources to the preparation and maintenance of declassification guidelines.

2. May complicate declassification reviews and actions if foreign governments insist on treatment different to that which we accord to our own records.